Ingham v. *Primrose*, 7 C. B. N. S. 82. As there is no privity between the maker and a subsequent holder, the maker is under no duty to such a holder to refrain from signing such an instrument. But the relation of debtor and creditor between the depositor and the bank imposes upon the depositor a duty of care to the bank. *Timbel* v. *Garfield Nat. Bank*, 121 N. Y. App. Div. 870. On the grounds of business convenience a bank should only be required to ascertain the genuineness of the depositor's signature before paying the check. As the Negotiable Instruments Law provides that if an incomplete note is not delivered, it will not bind the maker, the principal case must be supported on the theory that the depositor owes the bank a duty not to place his signature on a check unless he expects it to be paid if regularly presented. See N. Y. Laws of 1898, ch. 336, § 34.

Bills and Notes — Negotiability — Certainty in Amount: Attorney's Fees. — A promissory note contained an additional promise to pay counsel fees if collected by an attorney. *Held*, that the instrument is not negotiable. *American Machinery & Export Co.* v. *Druge Bros.*, 74 Atl. 84 (Vt.).

Two elementary requirements of a negotiable note are: (1) that it must contain a promise to pay a sum certain in money; and (2) that it must not contain an independent agreement to do anything else. *Smith* v. *Nightingale*, 2 Stark. 375; *Martin* v. *Chauntry*, 2 Str. 1271. Apart from the cases which hold a promise to pay attorney's fees invalid because usurious, notes like the one in the principal case have been attacked as violating both of these requirements. *Woods* v. *North*, 84 Pa. St. 407; *First Nat. Bank* v. *Larsen*, 60 Wis. 206. But it is generally held that a promise to pay a certain sum and the current rate of exchange is negotiable, though the amount to be paid is mathematically uncertain. *Hastings* v. *Thompson*, 54 Minn. 184. *Contra*, *Philadelphia Bank* v. *Newkirk*, 2 Miles (Pa.) 442. And a note is negotiable though it contains a provision that the holder shall have the option of demanding something else instead of payment in money. *Hosstatter* v. *Wilson*, 36 Barb. (N. Y.) 307. Similarly it would seem that a note containing a promise to pay attorney's fees should be negotiable. Until maturity the amount to be paid is certain, and the additional promise cannot possibly impair the note's commercial usefulness. *Sperry* v. *Horr*, 32 Ia. 184; *Farmers' Nat. Bank* v. *Sutton Mfg. Co.*, 52 Fed. 191. Such is the rule adopted in the Negotiable Instruments Law. See Brannan, Neg. Inst. L. p. 2, § 2.

Carriers — Custody and Control of Goods — When Railroad Becomes Warehouseman. — A traveling salesman left his trunk four days at the defendant's terminal depot which was also the initial depot for his next trip. The lower court charged that the jury might consider the defendant's habit of allowing this, as a silent consent to keep the goods as a common carrier, and might hold it liable for destruction of the goods by fire without negligence. *Held*, that the instruction is correct. *McCoy* v. *Atlantic Coast Line*, 65 S. E. 939 (S. C.).

In South Carolina, strict carrier's liability begins when baggage is delivered within a reasonable time before transportation is to commence, although not yet checked, and after the arrival of the goods at their destination, seems to last until a reasonable time for their removal. *Fleischmann* v. *R. R.*, 76 S. C. 237. See *Murphy* v. *Ry.*, 77 S. C. 76. Notice of arrival would probably not then be required. See *Spears* v. *R. R.*, 11 S. C. 158. The custom of keeping the trunks might possibly bear on the reasonableness of the time since the last trip or before the next. But with only the facts reported, it is difficult to see how the railroad's failure, on former occasions, to object to keeping the trunks more than a reasonable time, can be construed as a consent to be responsible as common carrier rather than as warehouseman or gratuitous bailee.

Choses in Action — Manner and Effect of Assignment — Partial Assignment of Debt. — A assigned to her attorney B, such portion of a debt

due her from C, as should be sufficient to satisfy B's bill of costs against A. B brought an action at law against C for the amount of such costs. *Held*, that he can recover. *Skipper* v. *Holloway*, 26 T. L. R. 82 (Eng., K. B. D., Nov. 13, 1909).

Although choses in action were theoretically not assignable at common law, they could in practice be transferred, since a complete assignment for value carried with it an irrevocable power of attorney by which the assignee might sue at law in the name of the assignor. *Welch* v. *Mandeville*, 1 Wheat. (U. S.) 233. See *James* v. *Newton*, 142 Mass. 366, 371. But an assignment of only a portion of a chose in action created simply an equitable right against the proceeds, and did not include the right to sue in the name of the assignor. It was considered both inequitable and illogical to impose several obligations on the debtor in place of the one which he had originally assumed. *Farlie* v. *Denton*, 8 B. & C. 395; *Mandeville* v. *Welch*, 5 Wheat. (U. S.) 277. The English Judicature Act of 1873 makes "any absolute assignment, not purporting to be by way of charge only," effectual at law. The act was a radical change of procedure, but whether it was intended to alter the substantive rule respecting partial assignments is at least questionable. See *Durham Bros.* v. *Robertson*, [1898] 1 Q. B. 765. The assignment in the present instance was not only partial but indefinite, to cover all sums which the plaintiff should be called on to advance. On this ground at least, the case seems clearly opposed to authority. *Jones* v. *Humphreys*, [1902] 1 K. B. 10; *Mercantile Bank* v. *Evans*, [1899] 2 Q. B. 613.

CONTRIBUTORY NEGLIGENCE — IMPUTED NEGLIGENCE — BENEFICIARY BARRED FROM RECOVERY FOR DEATH BY WRONGFUL ACT. — The plaintiff, father of the deceased, sued under a statute permitting the administrator to recover for death caused by wrongful act. As next of kin he would have been sole distributee. His negligence directly contributed to the death. *Held*, that the plaintiff cannot recover. *Scherer* v. *Schlaberg*, 122 N. W. 1000 (N. Dak.). See NOTES, p. 299.

CORPORATIONS — CORPORATIONS DE FACTO — AS CONDUIT OF TITLE. — Shares of the defendant were assigned to a certain bank. Thereafter, the bank's charter expired by limitation and proceedings were taken to extend it. Later, the bank assigned the shares to the plaintiff. It was objected that, as the law under which the bank attempted to extend its charter had no application to banks, it was not a corporation and the assignment to the plaintiff was of no effect. *Held*, that the court will not inquire into the validity of the bank's incorporation. *Campbell* v. *Mutual Loan, Homestead & Building Association*, 74 Atl. 144 (N. J. Ct. Ch.).

It is very generally laid down that the existence of a valid law under which there might have been incorporation is essential for the application of the doctrine of *de facto* corporations. *Gillette* v. *Aurora Rys. Co.*, 228 Ill. 261. See 1 THOMPSON, CORPORATIONS, 2 ed., § 230. Nevertheless, collateral attack is sometimes denied, even in the absence of such a law, when the elements of estoppel are present. *West Missouri Co.* v. *Kansas City Co.*, 161 Mo. 595. Conversely, although there may be no basis whatever for estoppel, collateral attack is sometimes denied, if such a law is present. *Haas* v. *Bank of Commerce*, 41 Neb. 754. Under such circumstances, where the question is one of title gained from an alleged corporation, the court will not inquire into the validity of incorporation. *Society Perun* v. *Cleveland*, 43 Oh. St. 481. But where there is neither a valid law nor basis for estoppel, the doctrine forbidding collateral attack upon *de facto* corporations has been refused, even though the only question is of chain of title. *Bradley* v. *Reppell*, 133 Mo. 545. Yet the desirability of free circulation of title to land, choses in action, and title generally is a strong argument in favor of denying collateral attack under the circumstances last stated, and the principal case therefore seems sound. See 21 HARV. L. REV. 305, 319.